

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH R. GALE,

Plaintiff,

CIVIL ACTION No. 06-15710

VS.

HONORABLE GERALD E. ROSEN
HONORABLE STEVEN D. PEPE

GENERAL MOTORS and
MICHIGAN STATE TREASURER,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION TO STRIKE (DKT. #19)

Plaintiff, *in pro per*, has filed a 42 U.S.C. §1983 Civil Rights Complaint (Dkt. #1), a Motion for Declaratory Judgment (alleging claims under the Employee Retirement Income Security Act ("ERISA"), 29 USC 1000 et seq.)(Dkt. #2), a Request for Preliminary Injunction (Dkt. #3), a Request For Temporary Restraining Order (Dkt. #7), and a motion for entry of a default judgement (Dkt. #10). On January 12, 2007, a motion to dismiss was filed by Defendant Michigan State Treasurer indicating that Plaintiff's Complaint and motions should be dismissed under Fed. R. Civ. P. 12(b)(6) for lack of jurisdiction (Dkt. #6). On February 15, 2007, Plaintiff filed a motion to strike Defendant Michigan State Treasurer's motion to dismiss claiming that Defendant failed to provide or serve him with a copy of the motion (Dkt. #19). All pre-trial matters were referred to the undersigned (Dkt. #5). For the reasons indicated below, it is **ORDERED** that Plaintiff's motion to strike is **DENIED**.

Plaintiff bases his motion to strike solely on his claim that he was not served with

Defendant Michigan State Treasurer's motion to dismiss. Yet, Defendant Michigan State Treasurer's motion to dismiss, along with a proof of service, was electronically filed with this Court on January 12, 2007 (Dkt. #6).¹ Defendant further indicates that also on January 12, 2007, as the proof of service states, a copy of Defendant Michigan State Treasurer's motion to dismiss was mailed by first class mail to Plaintiff Joseph Gale at the Boyer Road Correctional Facility (Dkt. #27, p. 2). Moreover, upon receiving Plaintiff's motion to strike, as a courtesy to the Court, Defendant faxed a second copy of its motion to dismiss to the Litigation Coordinator at the Boyer Road Correctional Facility. As Plaintiff concedes, the second copy was personally served upon Plaintiff on February 15, 2007, by Corrections Officer J. Davis (Dkt. #27, p. 2; Dkt. #33, p. 1). Indeed, Plaintiff filed a response to Defendant's motion on March 7, 2007 (Dkt. #33).

On February 20, 2007, the undersigned issued a Report and Recommendation that recommended that Plaintiff's Complaint be dismissed in its entirety based on this Court's lack of subject matter jurisdiction pursuant to the Rooker-Feldman doctrine and Michigan's doctrine of *res judicata* (Dkt. #25). Moreover, on March 7, 2007, Plaintiff filed a notice to dismiss Defendant Michigan State Treasurer as a party to this suit (Dkt. #36). As such, Plaintiff's motion to strike is moot and is therefore **DENIED**.

The parties to this action may object to and seek review of this Order, but are required to

¹ Fed. R. Civ. P. 5(b)(2) states as follows in pertinent part:

(2) Service under Rule 5(a) is made by:

* * * *

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing.

file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

SO ORDERED.

Dated: July 20, 2007
Flint, Michigan

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2007, I electronically filed the foregoing paper with the Clerk Court using the ECF system which will send electronic notification to the following: David M. Davis, Kathleen A. Gardiner, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Joseph Gale #420395, Boyer Road Correctional Facility, 10274 Boyer Rd., Carson City, MI 48811

s/ James P. Peltier
James P. Peltier
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